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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

DESTINY ELLIOTT, as personal
representative of the estate of Tyson
Wilcher,

Plaintiff,

v.

OREGON DEPARTMENT OF
CORRECTIONS, a subdivision of the
State of Oregon; REED PAULSON, MD;
JANE DOE; and JOHN DOES 1-2,

Defendants.

Civil No.

COMPLAINT

CIVIL RIGHTS 42 U.S.C. § 1983;
SUPPLEMENTAL STATE WRONGFUL
DEATH CLAIM

DEMAND FOR DAMAGES AND
ATTORNEY FEES

JURY TRIAL DEMANDED

I. INTRODUCTION

1. On June 7, 2019, Tyson Wilcher, a 37 year-old Native American man, was found unresponsive in his cell at Oregon State Penitentiary, a few hours after he begged staff for medical attention. Rather than help him, prison staff had told him to stop wasting their time, then threatened to pepper spray him. Destiny Elliott, duly appointed personal representative of Mr. Wilcher's estate, now brings this action for the violation of her brother's civil rights and his

wrongful death.

II. PARTIES

2. Plaintiff Destiny Elliott is a citizen of the State of Washington and decedent Tyson Wilcher's sister. She is the duly appointed, qualified, and acting personal representative of his estate.

3. Defendant Oregon Department of Corrections (hereinafter ODOC) is a subdivision of the State of Oregon. Decedent Tyson Wilcher was a prisoner in ODOC's custody from approximately September 2011 until his death on June 7, 2019. At the time of the events described herein, Mr. Wilcher was incarcerated at Oregon State Penitentiary (OSP) in Marion County, Oregon. ODOC is named here as a Defendant only in the state law wrongful death claim brought by his Estate.

4. At the time of the allegations made herein, Defendant Reed Paulson, MD, was the Chief Medical officer of Oregon State Penitentiary. At all material times, he was responsible for overseeing medical care provided to prisoners at OSP. He is sued in his individual capacity.

5. At the time of the allegations made herein, Defendant Jane Doe was an employee of ODOC, a nurse at OSP, and acting within the course and scope of her employment with the State of Oregon. She is sued in her individual capacity.

6. At the time of the allegations made herein, Defendant John Doe 1 was an employee of ODOC and acting within the course and scope of his employment with the State of Oregon. He is sued in his individual capacity.

7. At the time of the allegations made herein, Defendant John Doe 2 was an employee of ODOC and acting within the course and scope of his employment with the State of Oregon. He is sued in his individual capacity.

III. JURISDICTION AND VENUE

8. This is a complaint for damages and attorney fees based upon defendants' violation of plaintiff's constitutional, statutory, and common law rights. This court has jurisdiction over the subject matter of this Complaint under 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331, 1343(a)(3), (4). This Court has pendent jurisdiction over Plaintiff's state law wrongful death claim under 28 U.S.C. § 1967.

9. Venue is proper within the District of Oregon because all the events giving rise to this claim occurred in this judicial district and because Defendants are subject to personal jurisdiction in this judicial district. 28 U.S.C. § 1391(b). The acts and practices alleged herein occurred in Marion County, Oregon.

IV. TORT CLAIM NOTICE

10. Prior to the institution of this action, Plaintiff provided notice of her claims to all necessary parties pursuant to ORS 30.275

V. FACTUAL ALLEGATIONS

11. On or about June 6, 2019, Tyson Wilcher was incarcerated at OSP. At some point during this day, Mr. Wilcher became agitated, and exhibited signs of paranoia. When he approached a corrections officer and expressed this paranoia, the officer had Mr. Wilcher placed in a single cell in the Disciplinary Segregation Unit (DSU) for his protection and on suspicion that Mr. Wilcher was on drugs.

12. Later that day, Mr. Wilcher complained to DSU staff that he was experiencing chest pain and shortness of breath, and he requested to be taken to medical. Two DSU officers, whose identities are unknown at this time and are referred to in this complaint as JOHN DOE 1 and JOHN DOE 2, put Mr. Wilcher in shackles and escorted him to the medical unit.

13. When Mr. Wilcher arrived in the medical unit, he was visibly worried, and he told medical staff that he was having difficulty breathing and that he had chest pains.

14. A nurse, whose identity is unknown at this time and is referred to in this complaint as JANE DOE, checked some of Mr. Wilcher's vital signs, then told him that there was nothing wrong with him, and that he "needed to stop wasting [her] time and go back to his fucking cell."

15. Mr. Wilcher refused to leave, insisting that he did not feel right and wanted medical care. He remained in medical for an additional 15 to 20 minutes, until the two DSU officers who escorted him threatened to pepper spray Mr. Wilcher if he did not comply. After the officers pulled out their pepper spray canisters as a show of force, Mr. Wilcher relented, and the officers took him back to his cell.

16. A few hours later, at approximately 2:00 AM on June 7, 2019, staff found Mr. Wilcher lying unresponsive in his DSU cell.

17. When outside medics arrived, Mr. Wilcher was foaming at the mouth, and he began to convulse. He was taken to Salem Hospital's emergency department, where hospital staff attempted to revive him, to no avail. Mr. Wilcher was pronounced dead at about 3:18 AM.

18. A medical examiner later determined Mr. Wilcher's death was caused by methamphetamine toxicity. An autopsy found that a femoral blood specimen taken from Mr. Wilcher's body contained 5.4 mg/L of methamphetamine.

19. In the months prior to this incident, at least one other prisoner in OSP had gone to the infirmary, been refused treatment, was returned to his cell, and died within hours.

20. Upon information and belief, at all material times, prisoners who wanted to did not have difficulty obtaining methamphetamine in OSP. Prisoners who obtained

methamphetamine would be able to ingest it themselves, sell it, or use a large amount of the drug to poison others. Some correctional staff also engage in drug distribution.

VI. CLAIMS FOR RELIEF

21. Plaintiff brings a claim under 42 U.S.C. § 1983, for violations made by the individual named Defendants of Plaintiff's Eighth Amendment rights, and a state law claim.

22. The Defendants, except for ODOC, are all persons within the meaning of 42 U.S.C. § 1983.

23. Plaintiff seeks an award of economic damages, non-economic damages, and attorney fees and litigation expenses/costs against defendants.

FIRST CLAIM - EIGHTH AMENDMENT

(42 U.S.C. § 1983 Claim for Deliberate Indifference to Serious Medical Needs; Against Defendants Paulson, Jane Doe, and John Does 1-2 in Individual Capacity)

24. Plaintiff incorporates and realleges each of the above paragraphs.

25. Under the Eighth Amendment to the United States Constitution, Mr. Wilcher had a right to adequate medical treatment for his serious medical needs.

26. As alleged above, in refusing to properly examine Mr. Wilcher and provide him with medical care, Defendants Jane Doe and John Does 1-2 were deliberately indifferent to Mr. Wilcher's serious medical needs under the Eighth Amendment to the U.S. Constitution. Mr. Wilcher had a clearly established right under the United States Constitution to receive adequate medical care for his serious medical needs rendering Defendants liable to Plaintiff under 42 U.S.C. § 1983.

27. As alleged above, Defendant Paulson is a supervisor who oversees the medical care provided by OSP staff. At the time of Mr. Wilcher's death, Defendant Paulson was aware that his staff were refusing to treat some patients and that those untreated patients died soon

after; he knew or should have known that this conduct would deprive Mr. Wilcher of his rights; and he failed to prevent his subordinates from continuing to engage in such conduct. Mr. Wilcher' had a clearly established right under the United States Constitution to receive adequate medical care for his serious medical needs rendering Defendant Paulson liable to Plaintiff under 42 U.S.C. § 1983.

28. Based on the Defendants' conduct, Plaintiff is entitled to an award of damages.

29. The denial of Plaintiff's right to due process was the direct and proximate cause of the violation of Plaintiff's rights and the death of Mr. Wilcher. Plaintiff has suffered economic, and non-economic damages in an amount to be determined at trial.

**SECOND CLAIM – WRONGFUL DEATH
(State Law Claim Brought by Estate of Tyson Wilcher against Oregon Department of
Corrections)**

30. Plaintiff incorporates and realleges each of the above paragraphs.

31. Injury to Tyson Wilcher, including death, was a foreseeable risk of harm.

32. Defendant ODOC's conduct was unreasonable in light of the risk of harm to Mr. Wilcher. Defendant ODOC's conduct unreasonably created a foreseeable risk of harm to a protected interest of the kind of harm that befell Mr. Wilcher.

33. Defendant ODOC's conduct, including its acts or omissions, was a cause of harm to Mr. Wilcher.

34. Defendant ODOC's medical treatment of Mr. Wilcher fell below the standard of care, thereby causing harm to Plaintiff.

35. As the operator of a correctional facility holding Mr. Wilcher in custody, Defendant ODOC had a special relationship with Mr. Wilcher and owed Mr. Wilcher a heightened, non-delegable duty of care. This duty included protecting him from foreseeable harms that would arise at OSP, including preventing illegal drugs from entering the facility.

Because Mr. Wilcher was in Defendant ODOC's custody, he was entirely in their control when it came to access to medical care. Had Mr. Wilcher been free, he would have been able to seek and receive medical treatment on his own. However, because he was in Defendant ODOC's custody, when he sought medical attention at OSP, his pleas for assistance were ignored. Defendant ODOC voluntarily took custody of Mr. Wilcher under circumstances which deprived him of normal opportunities for protection and under a duty to ensure he had access to adequate medical care while incarcerated. Defendant ODOC did not meet its obligation to provide Mr. Wilcher with healthcare, in compliance with appropriate professional standards.

36. The death of Mr. Wilcher was caused by the wrongful acts or omissions or negligence of Defendant ODOC, acting through its agents and officers, the staff at OSP, including other Defendants name in this action.

37. This action is brought on behalf of the Estate to benefit the person who, under the law of intestate succession of the State of Oregon, would be entitled to inherit the personal property of the decedent.

38. As a direct and proximate result of Defendant ODOC's unlawful conflict, Plaintiff and Mr. Wilcher's heirs suffered the loss and companionship of Mr. Wilcher which resulted in emotional distress and the loss of his economic contribution to the family.

39. As a result of Defendant ODOC's wrongful and negligent conduct, the Estate of Tyson Wilcher has sustained the following injuries, economic, and non-economic damages:

- a. Charges for Mr. Wilcher's memorial and burial expense;
- b. An amount that would have justly, fairly, and reasonably compensated the decedent for pain and suffering during the period between injury to Mr. Wilcher and his death;
- c. An amount that would justly, fairly, and reasonably compensate for pecuniary

loss to Mr. Wilcher's estate, including loss of income and benefits;

- d. An amount that would justly, fairly, and reasonably compensate Mr. Wilcher's statutory heirs for pecuniary loss and for loss of the society, companionship, and services of Mr. Wilcher.

40. As a result of Defendant ODOC's above-described negligent conduct, the Estate of Mr. Wilcher is entitled to be fully and fairly compensated for economic damages in a sum that is just and in an amount to be determined by a jury, not to exceed \$380,000.00; and noneconomic damages in a sum that is just and in an amount to be determined by a jury, not to exceed \$3,000,000.00.

CONCLUSION

WHEREFORE, Plaintiff prays for relief as follows:

- a. For judgment in favor of Plaintiff against Defendants for his damages;
- b. For reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 for his claims for relief.
- c. For Plaintiff's costs and disbursements incurred during this action;
- d. For such other and further relief as this Court deems just and equitable under the circumstances.

DATED: June 4, 2021.

/s/ Alex Meggitt

Alex Meggitt, OSB #174131

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Juan C. Chavez, OSB #136428

Email: jchavez@ojrc.info

P.O. Box 5248

Portland, OR 97208

Attorney for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> _____</p>	<p>DEFENDANTS</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i> _____</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <div style="display: flex; justify-content: space-between;"> <div style="width:48%;"> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> </div> <div style="width:48%;"> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p> </div> </div>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <th></th><th style="text-align: center;">PTF</th><th style="text-align: center;">DEF</th><th></th><th style="text-align: center;">PTF</th><th style="text-align: center;">DEF</th></tr> <tr> <td>Citizen of This State</td><td style="text-align: center;"><input type="checkbox"/> 1</td><td style="text-align: center;"><input type="checkbox"/> 1</td><td>Incorporated or Principal Place of Business In This State</td><td style="text-align: center;"><input type="checkbox"/> 4</td><td style="text-align: center;"><input type="checkbox"/> 4</td></tr> <tr> <td>Citizen of Another State</td><td style="text-align: center;"><input type="checkbox"/> 2</td><td style="text-align: center;"><input type="checkbox"/> 2</td><td>Incorporated and Principal Place of Business In Another State</td><td style="text-align: center;"><input type="checkbox"/> 5</td><td style="text-align: center;"><input type="checkbox"/> 5</td></tr> <tr> <td>Citizen or Subject of a Foreign Country</td><td style="text-align: center;"><input type="checkbox"/> 3</td><td style="text-align: center;"><input type="checkbox"/> 3</td><td>Foreign Nation</td><td style="text-align: center;"><input type="checkbox"/> 6</td><td style="text-align: center;"><input type="checkbox"/> 6</td></tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT <i>(Place an "X" in One Box Only)</i>			Click here for: Nature of Suit Code Descriptions.		
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>INTELLECTUAL PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

☐ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District *(specify)*

☐ 6 Multidistrict Litigation - Transfer

☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing <i>(Do not cite jurisdictional statutes unless diversity):</i> _____ Brief description of cause: _____
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____

DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY				
RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____